# The Solicitors' Journal

VOL. 90 — Saturday, August 17, 1946 — No. 33

## CONTENTS



# CURRENT TOPICS

### The Magistrates' Courts

ON the road towards reform in the magistrates' courts, it will be noted with satisfaction that the Manchester City magistrates at their quarterly meeting on 29th July, 1946, appointed a sub-committee to report on the present arrangements for the selection of justices of the peace and to recommend any changes which may be necessary to ensure that the most suitable persons be appointed. The committee was also asked to consider whether the expenses of justices incurred in the course of their duty should be paid out of public funds. The report is to be submitted to a full meeting of the magistrates on 28th August, and will later be forwarded to the Magistrates' Association, which is preparing evidence for the Royal Commission under the chairmanship of LORD DU PARCQ, which is to review the present system relating to the selection and removal of magistrates. Another matter which received the attention of the Manchester City magistrates at their quarterly meeting was a proposal on a report from the office committee that members of the staff should become articled clerks in order to enable them to qualify as clerks to justices. It will be recalled that the Departmental Committee on Justices' Clerks recommended in 1944 that persons without professional qualifications should no longer be regarded as eligible for appointment as justices' clerks. The Manchester Bench has approved their office committee's report and decided that present assistants who are not qualified should retain their eligibility and become articled to the senior court clerk. The Law Society, it is understood, has given its approval to this proposal.

### Circuit Officers and Associates

THE position of clerks of assize, circuit and London associates and clerks of indictment has for many years been unsatisfactory both from their own point of view and from the point of view of the administration of justice. These officers are mostly barristers, they are without pension rights and, as they spend most of their time on circuit, they have little time left over in which to practise or supplement their salary by other remunerative work. Under a new system introduced by the Supreme Court of Judicature (Circuit Officers) Bill, clerks of assize will become whole-time officials with improved salary and pension rights on terms similar to those of King's Bench masters, though the salary will not be as high. Under a new organisation under the central control of the Lord Chief Justice, to be commenced on a date to be appointed under the Act, the London associates, the circuit associates and the clerks of indictments will all be part of one department of the Central Office, and will work in London or on circuit as required. The Lord Chief Justice is given the power to appoint clerks of assize, who must be barristers of five years' standing and members of the circuit bar mess and circuit to which they are appointed. The power of appointment of circuit associates and clerks of indictment on circuit is transferred from the circuit judge to the Lord Chancellor. Solicitors will welcome the new scheme and will be particularly interested in the fact that clerks of assize will be appointed from the circuit in which they work. As LORD LLEWELLIN pointed out on the second reading in the Lords, this is important from the point of view of getting to know solicitors who come to the assize courts with cases.

### Emergency Law Making

AT a meeting of the Institute of Arbitrators, held on 22nd March, 1946, under the presidency of Sir LYNDEN MACASSEY, K.B.E., Sir CECIL CARR gave an address on "Law Making in Emergency." Sir Lynden Macassey introduced Sir Cecil Carr as Counsel to the Speaker of the House of Commons, and the outstanding authority on delegated legislation. Sir Cecil quoted: "Considering that sudden causes and occasions fortune many times which do require speedy remedies, and that, by abiding for a Parliament, in the meantime might happen great prejudice to ensue to the Realm," from the preamble to Henry VIII's Statute of Proclamations of 1539, which required a royal decree to be obeyed as if it were an Act of Parliament. He said that Henry had not had to grab power for himself; power had been handed to him on a plate by a Parliament which had been at all times thoroughly sympathetic and manageable. Sir Cecil said that after proceedings lasting a few minutes in the Commons and a matter of seconds in the Lords, on the 8th August, 1914, D.O.R.A. (the Defence of the Realm Act) had begun her prolific career, and as the months had gone by, further successive amending Acts had been passed which had enlarged the scope of those powers. The war of 1914 had undoubtedly given an opportunity, under cover of defence powers, to fill up a number of odd gaps in our statute book. For instance, we had never had any power to control narcotic drugs or the possession of fire-arms, or to compel the installation of wireless in ships. When that war had come finally to an end, such provisions had been embodied in permanent statutes, and had become the law of the land. After referring to the 1920 Restoration of Order in Ireland Act, the Emergency Powers Act to deal with the strike situation in this country in 1920 and the proclamation of the emergency in the general strike of 1926, Sir Cecil came to "the biggest emergency of all." Sir Cecil said that the 1939 Act had in several ways given the executive much better protection than they had had in 1914 under the D.O.R.A. legislation, but it had also introduced two fresh safeguards which had been absent in the war of 1914. First, the 1939 Act was to last for only twelve months at a time, though it could be continued for another twelve months annually by

a resolution of both Houses of Parliament. Secondly, all the Defence Regulations had to be laid before Parliament for a period during which they could be annulled if Parliament so desired.

### Current Emergency Law

CONTINUING his address, Sir CECIL CARR said that The Emergency Powers (Defence) Act of 24th August, 1939, had expired on 23rd February last; so that tap had been turned off, but at the same time two other taps had been set running. Before Christmas there had been a Supplies and Services (Transitional Powers) Act, which had taken over the Defence Regulations system with a host of new purposes such as demobilisation and resettlement at home and famine relief abroad. These powers were to run for five years. Next, in January last an Emergency Laws (Transitional Provisions) Act had continued, with modifications, a long string of war-time regulations until the end of 1947. So although we had said good-bye to some war-time friends like 18B, we still had a mass of Defence Regulations, some operating for two years ahead under last January's Act; some operating for five years ahead under last December's Act, and some under both of them. Sir Cecil asked: "Do we still believe in laws made by discussion, and in those opportunities for argument and persuasion both on the part of a solid majority and on the part of what Lord Lindsay has recently so finely spoken of as a 'responsible and tolerated opposition' within our British Parliamentary system . . . Or are we doomed to grope blindly for ever at the bottom of a pit while some monster machine chucks down chunks of prefabricated legislation upon our defenceless heads?" He said that we were combining at present, and we had not entirely abandoned one for the other. In leaving the problem to his audience Sir Cecil might well have left it to us all. So long as there is faith in democracy, we believe that a solution will be found.

### Housing Subsidies and Contributions

A USEFUL summary of the main provisions of the Housing (Financial and Miscellaneous Provisions) Act, 1946, with explanatory notes, is contained in Ministry of Health Circular 118/46, issued on 12th July, 1946, to housing authorities and county councils in England. The circular states that the main purpose of the Act is to provide for Exchequer subsidies and rate contributions sufficient to enable local authorities to let at reasonable rents the houses they are now building. In order to encourage the building of houses in "poor" areas, the Minister may apply the agricultural provisions to other houses provided in a non-county borough or an urban or rural district where he is satisfied that there is already an exceptionally low average rent and that expenditure by the local authority on housing at the standard rate would impose an undue burden on the district (s. 3 (2)). Any local authority may apply to the Minister for reduction of the rate contribution on new houses and for a corresponding increase of the Exchequer subsidy, where the average general rate poundage for the last three financial years is exceptionally high in relation to that of other comparable authorities, and the housing rate for the last financial year for which information is available is also exceptionally high. An application may be made whether the houses in question already attract the higher Exchequer subsidy or not (s. 7). A new provision is that, where a house is provided on a site exceeding in cost £1,500 an acre as part of a scheme of mixed development of flats and houses, the houses may, in certain circumstances, be treated as flats for the purposes of Exchequer subsidy and rate contribution (s. 4). Additional Exchequer assistance up to £2 per annum per house can be given where the Minister is satisfied that the cost of providing the house is substantially enhanced by measures taken to guard against subsidence. In that event an additional rate contribution equal to half the additional Exchequer assistance will be payable (s. 6). Section 13 increases to £15 per annum for forty years the maximum Exchequer contribution (previously £10 per annum) for forty years payable under s. 3 of the Housing (Financial Provisions) Act, 1938, for houses provided by private developers for the agricultural population under arrangements made under that section after the 18th April, 1946. Any house for which this contribution is made must, if let, be let at a rent not exceeding the rent which the Council would have charged had it been provided by them. No contribution is payable for any year during the whole or any part of which the house has been occupied by a person other than the owner or a tenant. Thus subsidy is not payable in respect of a "tied" house (s. 13). The circular contains eight closely-printed notes on sections and notes on procedure, and is published by H.M. Stationery Office at the modest price of 2d.

### Law Students Debating Society

ON 15th October, 1946, the Law Students' Debating Society, which held its centenary in 1936, will resume its weekly debates after an interval of seven years. Membership is open to solicitors, articled clerks, barristers and law students of the Inns of Courts and the Universities. The Society is to meet again every Tuesday night in The Law Society's Court Room from October to May. Legal subjects and general subjects are to be debated in alternate weeks, and inter-debates are arranged from time to time. Although there are two speakers on the paper on each side in legal debates, every encouragement is given to the nervous novice to speak, for in general debates only one speaker is on the paper on each side, and the minimum of formality is followed. Nothing but constant speaking on one's feet in public can, in the absence of the somewhat rare natural gift of confident fluency, remove or lessen that nervousness to which some of the best speakers of all time have confessed. There is no need to practise talking with a pebble in one's mouth, like Demosthenes of old, so long as such societies as the Law Students Debating Society exist to help the unpractised. Judges, silks, members of Parliament and other well-known public figures first learnt their oratory on the Society's Tuesday evenings, and on the first Tuesday evening on which the Society is to recommence its activities after its long interval of enforced inanition distinguished old members are being asked to speak. Agenda papers are to be distributed in September, but, as many addresses have changed, old members as well as intending members are invited to communicate with one of the secretaries, Mr. John M. Shaw, of 1, Garden Court, Temple, E.C.4, or Mr. Bernard W. Main, The Outer Temple, 222, Strand, W.C.2.

### Crime in the Metropolis

MATTERS are evidently becoming worse in the realm of crime, before, as it is hoped, they will become better. Sir HAROLD SCOTT, in his first report as Commissioner of Police of the Metropolis for 1945 (H.M. Stationery Office, Cmd. 6871, price 1s.), records that burglaries and housebreakings, which numbered 600 a month in January, rose to 800 a month in December. Shopbreakings increased by 80·8 per cent. compared with 1944 and by 139·5 per cent. compared with 1938. Throughout the war up to August, 1944, the figure stood at about 500 a month; by May, 1945, the monthly total was 1,246, and by December had reached 1,307. Of arrests for juvenile crimes, the figures for the year for those of sixteen years of age and under were 5,337, against 4,748 in 1944, while the total under twenty-one years rose from 7,228 to 8,017. Arrests at ten years and under increased from 684 in 1944 to 811 last year. Out of 209 persons arrested in 1945 for robbery and assaults with intent to rob, eighty-three were under twenty-one, nine were twelve years of age or less and seventeen were between fourteen and sixteen years of age. Of larceny from the person, out of 172 arrests fifty-six were persons under twenty-one, two were only nine years old, five were aged ten years and fifteen others were under fourteen years. There were thirty-five victims of murder, seventeen more than in 1944. The figures are shocking and the suggested causes—unsettlement owing to the war, the return to London of large numbers of people and the presence of many troops—do not give much hope of early cure.

# NEW ROADS

In a letter to *The Times* written before the war, Professor Sir Patrick Abercrombie wrote: "There are enormous areas of thinly populated country across which through traffic could go from large centre to large centre. Entirely new roads through 'back land' will certainly disfigure the country much less than widened existing roads." More recently the Minister of Transport, in a statement to the House of Commons upon highway policy, submitted a diagram showing a future pattern of principal national routes. If these larger schemes are still in the future there are many less ambitious by-pass and major schemes of new road construction coming into effect at an early date.

It is proposed in this short note to examine the existing procedure for the protection and sterilisation of land for new roads or substantially altered existing roads contained in the Restriction of Ribbon Development Act, 1935, the importance of which to landowners is not so generally appreciated as it should be.

Under s. 1 of the Act highway authorities may adopt standard widths as respects any road. Under s. 2 building and access restrictions are in force automatically on roads which were classified roads on 17th May, 1935, and may be adopted by highway authorities for other roads. In many cases both s. 1 and s. 2 restrictions will be in force on the same length of road, s. 1 being intended to safeguard the actual land required for highway purposes and to prevent new access thereto, and s. 2 to enable the highway authority to fix a proper building line. In both cases the restrictions on building operate for a certain width from the middle of the road, the distance being from the middle to either boundary of the effective restriction.

The middle of the road is, however, a variable feature. Improvements are not always carried out equally on each side of an existing road: they may pass right across a field to cut off a corner, they may constitute a by-pass round the back of some country town or village, and there are many such projected, or they may constitute entirely new roads through virgin country linking large towns together.

The definition section of the Act, s. 24, requires careful study. By it "middle of the road" means, in relation to any road for the improvement of which plans have been prepared by the highway authority with the approval of the Minister (or in the case of a trunk road made or approved by the Minister), the middle of the road as proposed to be improved in accordance with such plans. "Road" includes any proposed road, and "proposed road" means land upon which, in accordance with plans approved by the Minister (in the case of a trunk road plans made or approved by the Minister), a highway authority are for the time being constructing or intending to construct a highway shown in the plans.

To take an example, a highway authority desiring to construct in the future a by-pass round a country town will submit for the Minister's approval under s. 24, for the purpose of fixing the middle of the road, a plan showing the new proposed road. Having obtained the Minister's approval they may proceed with the necessary steps for adopting standard widths, thereby in effect sterilising the land required for the by-pass construction, and may also adopt the s. 2 restrictions.

No provision is made in the Act for any notice to owners or any public notice to be given of an application under s. 24, or for facilities for objections by landowners or the public. It is agreed that notice has to be given of the adoption of standard widths with facilities for objections to be made and the holding of a local inquiry, but it is strongly arguable that such objections and inquiry must be confined to the appropriateness of the standard widths adopted, e.g., that they are not excessive for the traffic needs of the road, and do not extend to the suitability of the line of the road or the discussion of alternative routes, or in fact to whether the new road is or is not necessary. It is understood that in practice the Minister does give notice of, and if necessary holds a local inquiry on, a major s. 24 application, but this is not required by the Act and, of course, may not take place being entirely dependent on departmental practice.

The unsatisfactory position for landowners therefore arises that they may find a new road laid down as an accomplished fact on paper across their property without any opportunity of objecting except at a later date when they may object simply to the width of such road, and the time between the approval of the new middle of the road line and the notice of adoption of standard widths may vary considerably. This position must give rise to some consideration by conveyancers, and the action which they should take is indicated in the next paragraph.

First, the Minister's approval of a plan does not itself impose any restriction on land and is, therefore, not registrable in the highway authority's local land charges register. It is, however, most material for a purchaser's solicitor to know of its existence at the earliest possible date. He should, therefore, submit a supplementary inquiry with his search as to whether any plans of proposed roads or new middle of the road lines have been submitted to or made or approved by the Minister. This is not included in the standard printed form approved by The Law Society, but it is submitted that it is a perfectly proper inquiry. Second, it is believed that in many cases purchasers' solicitors do not search in the local land charges register of the highway authority, if the land is not in the neighbourhood of some important road but, say, fronts a country lane. Solicitors would be well advised in the case of all land in open country, even if it does not abut on any road, to search in the highway authority's register for any standard widths or s. 2 restrictions adopted for new roads.

Under s. 5 of the Act a register has to be kept by the highway authority in which any person, having any estate or interest in any piece of land within such distance from a road that it may be made subject to restrictions adopted under s. 1 or s. 2 of the Act, may require to have his name and address entered for the purpose of receiving notice of such adoption with a view to submitting objections. This is of little or no protection in the majority of cases visualised in this article as the land affected will be far more than 220 feet from the middle of any existing physical road, with the consequence that the owner will not be registered and, even if the Minister does decide to hold an inquiry on the s. 24 application, will not receive an individual notice of this, or, unless he subsequently registers, of the following adoption of s. 1. This is a matter for careful thought by those to whom the register is likely to be of most use, namely, owners who do not occupy or live in the neighbourhood of their lands, and therefore are unlikely to see notices merely published in the local Press.

The procedure in Sched. II of the Trunk Roads Act, 1946, should be noted, whereby the Minister is required to advertise and, if objections are made and not withdrawn, to hold a local inquiry on any order proposed to be made by him under s. 1 (2) of this Act directing that any existing road or any road proposed to be constructed by him should become a trunk road, or that a trunk road should cease to be a trunk road, but this procedure does not rectify the difficulties outlined in this article. The making of these orders, however, requires to be watched by owners' advisers as by s. 8 (5) of the 1946 Act the s. 2 restrictions of the Ribbon Development Act, if not already in force, come into force on the date on which notice of the draft order is first published, and it is suggested that with a local land charges search a supplementary inquiry asking whether any such notice has been published affecting the land concerned might well be put to the county or county borough council concerned, who would normally be in possession of this information.

# COMPANY LAW AND PRACTICE

## A SNAG IN TABLE A—II

THIS week I shall continue with the discussion started last week of the case of *Greenhalgh* v. *Arderne Cinemas, Ltd.* [1946] 1 All E.R. 512. As I pointed out last week, it is not easy to see to what lengths the decision in that case may go; whether it is to be confined to a very limited number of cases in which there are special facts similar to the facts in *Greenhalgh's* case, or whether it has a much wider application. One thing at least which may be collected with certainty from that case is the proposition that in certain circumstances the holder of a bare majority of shares may, by sub-dividing his shares, obtain a three-quarters majority.

I suggested that this was an unsatisfactory position, and that it would be as well when drafting articles to insert some provision which would prevent such a result arising. In considering how to do it, it is essential to bear in mind that no question of class rights arises. The Court of Appeal expressly said that the question whether the shares mainly held by the minority shareholder constituted a class or not did not arise, as no alteration had taken place in the voting right attached to his shares, namely, one vote for each share. This is the more necessary to be borne in mind as the Master of the Rolls, having expressed this view, thereafter refers to the shares mainly held by the minority shareholder as a class.

Towards the end of his judgment he says, for example: "Construing the provisions here, we must read the class rights as being confined to the express terms of the article, which alone can restrict the power of sub-division given by the Act and the articles . . . As Vaisey, J., pointed out and I agree, the effect of this resolution is, of course, to alter the position of the 1941 2s. shareholders. Instead of Greenhalgh finding himself in a position of control, he finds himself in a position where his control has gone, and to that extent the rights of the 1941 2s. shareholders are affected as a matter of business. As a matter of law, I am quite unable to hold that, as a result of the transaction, the rights are varied; they remain what they always were—a right to have one vote per share *pari passu* with the ordinary shares for the time being issued, which include the new 2s. ordinary shares resulting from the sub-division."

This reasoning would equally apply if the shares which constituted the bare majority and were subsequently sub-divided were of one class, and the shares which constituted the minority were of another class. In the above expressions of the Master of the Rolls there are, it will be noted, two separate antitheses: one between "being varied" and "being affected," and the other between "a matter of law" and "a matter of business." As a result of this it does not seem that one can safely conclude that a different result would have been arrived at, had it been a question of different classes, and had the variation of rights clause not merely permitted variation under the circumstances laid down but prohibited any operation either varying or affecting the rights of a particular class, for it would be possible at any rate to argue, on the language of the Master of the Rolls, that such a transaction as took place in the present case only affected the rights as a matter of business and not as a matter of law.

It therefore appears unsafe in such a case as I have supposed, of shares of different classes, to rely on any prohibition against the variation or affecting of the rights of the holders of any class of shares, and the safer course would be to invent an entirely new article which should prohibit any change in the ratio between the number of votes attached to any class of issued shares and the amount payable on such shares in the event of a winding up without the consent of the holders of the shares of any other class.

Such an article could also be adapted for the purpose of preventing such a change in the voting rights of some only of the issued shares of a class without the consent of the holders of three-quarters of the shares of that class.

It will be noticed that I have suggested an article limited in its effect to issued shares. It is desirable that the directors should have power to issue unissued shares on the terms they consider to be in the best interests of the company, and it is quite clear that they could not use the power of allotting shares, whether they first sub-divided them or not, so as to increase their voting power. In *Punt* v. *Symons* [1903] 2 Ch. 506, Byrne, J., said: "On the evidence I am quite clear that these shares were not issued *bona fide* for the general advantage of the company, but that they were issued with the immediate object of controlling the holders of the greater number of shares in the company . . ." and towards the end of his judgment said: "If I find as I do that shares have been issued under the general and fiduciary powers of the directors for the express purpose of acquiring an unfair majority . . . I think I ought to interfere." Any allotments of shares made by the directors for such a purpose will be declared void (*Piercy* v. *S. Mills & Co.* [1920] 1 Ch. 77).

This principle would therefore appear to take care of issues of shares by the directors. There remains the possibility of an issue of shares by virtue of an ordinary resolution of the company. As a general rule every member of a company has the right to vote as he thinks fit on any resolution, but this rule is subject to the overriding one that a majority of the members of a company cannot use their votes so as to deprive the minority of property or rights. In *Cook* v. *Deeks* [1916] A.C. 554, Lord Buckmaster, L.C., in giving the judgment of the Privy Council, said: ". . . if directors have acquired for themselves property or rights, which they must be regarded as holding on behalf of the company, a resolution that the rights of the company should be disregarded in the matter would amount to forfeiting the interest and property of the minority of shareholders in favour of the majority and that by the votes of those who are interested in securing the property for themselves. Such use of voting power has never been sanctioned by the courts, and, indeed, was expressly disapproved in the case of *Menier* v. *Hooper's Telegraph Works* (1874), L.R. 9 Ch. 350."

It would seem at first sight only reasonable that this principle should apply to rights, such as to obtain new shares in a company, which are created by a resolution passed by the votes of a majority in cases where those majority votes are used to confer those rights on the majority to the exclusion of the minority. Indeed, if this were not so, any body of persons entitled to 51 per cent. of the votes at meetings of a company could always create new shares and resolve to issue them to themselves so as to enable them to acquire a three-quarters majority, and such a procedure would provide a very simple way of evading the provisions of the Companies Act as to special and extraordinary resolutions.

*Greenhalgh's* case, however, suggests that such may, in certain circumstances, be the position. It was conceded by Greenhalgh's counsel, and great weight was laid upon the concession by the Master of the Rolls, that if the company had created a number of new ordinary shares of 2s. each and had issued them, each share carrying one vote, that would not have been an interference with the rights of the original 2s. shares. It would be interesting to know whether the company's articles incorporated cl. 35 of Table A, which provides, *inter alia*, that, subject to any direction to the contrary, all new shares shall before issue be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings, in proportion as nearly as the circumstances admit to the amount of the existing shares to which they are entitled.

The amount of the shares must be taken to be something different from the number of the shares, and is, therefore, equivalent to the total nominal amount, and consequently if this provision was inserted the anti-Greenhalgh party would

have been entitled to five of the new shares, and consequently five more votes, for every 10s. share they held, while Greenhalgh would only be entitled to one new share for every existing share he held. He would thus get more shares, but could, if the total number of new shares was sufficiently large, be reduced to having less than one-quarter of the votes in the company.

This therefore clearly suggests that where you have a company in which there are different kinds of shares and one kind carries more votes per £1 of nominal capital than the other, the holders of the shares of greater voting power should endeavour to secure the insertion of a provision in the articles prohibiting the creation of any new shares without the sanction of three-quarters of the holders of the shares of that class.

This case then indicates certain ways in which a majority in a company may be increased either by a manœuvre with the issued shares or by the creation of new shares, and I have made tentative suggestions as to methods of preventing such a transaction taking place by inserting appropriate provisions in the articles. I shall be very surprised, however, if this case does not have repercussions, and if numbers of people do not try to obtain greater control of their companies by some such operations as are suggested by this case.

# A CONVEYANCER'S DIARY

## COVENANTS FOR THE BENEFIT OF A BUSINESS

ONE sometimes comes across covenants restricting the user of land which have the appearance of having been taken for the protection of some other asset of the covenantee (usually his business) rather than for that of his land. The first question in such a case is whether that is in fact the only intention reasonably attributable to the covenant. If so, it is necessary to consider whether the covenant can be enforced by and against any person except the original covenantee and covenantor.

In considering the first of those questions one must, of course, begin by ascertaining whether the covenantee had land capable of being protected by the covenant, and also whether he had, or was interested in, a business capable of such protection. If he has land but no business, the problem does not arise; if he has land and a business, it does not usually arise in its most acute form; if he has no land at all, or no land so situated that its value could be affected by anything done on the burdened land, but has a business which the covenant might assist, the difficulty must be faced. In many cases where there is both land and a business, it is possible to attribute the covenant to the protection of the land. For instance, one often finds, especially in old covenants, a long list of named businesses; the covenantee may be carrying on one or two of them himself, but can hardly be carrying on all of them. If so, the covenant must normally be held to be for the protection of the covenantee's land. In such cases the named businesses are not necessarily objectionable in themselves. It is, of course, another matter if the prohibited activities consist expressly of "offensive" or "noisome" trades or businesses, or if the named businesses are all either intrinsically objectionable to those who live near them, or are in the circumstances objectionable relative to the particular vicinity. Thus, a covenant prohibiting user for purposes of a public house of a plot in a residential area, might well be treated as benefiting land in the area belonging to the covenantee, even if he happened also to be lessee of the nearest public house.

The real difficulty arises if the covenantee has land fairly nearby on which he conducts a particular trade, not in itself offensive, and where one finds the covenant prohibiting only that trade, with or without cognate trades. Thus, I once saw a case where the covenantee carried on business in a London suburb, doing certain particular sorts of repairs to motor cars. He sold a piece of land which happened to belong to him three or four hundred yards away, subject to a covenant prohibiting user for the doing of repairs of those and similar sorts. In that case it seemed clear that the covenant was not intended to protect the covenantee's land at all, but only the business carried on there. The case was disposed of at an early stage, so that the legal position was never tested. But I do not imagine that there would have been much difficulty in getting the evidence of a valuer to prove that the value of the covenantee's land, as land, was not enhanced by the covenant, and that it would not have been impaired by the setting up of a business contrary to the covenant. What might, no doubt, have been damaged was the goodwill of the covenantee's business.

Cases raising this point in its clearest form are not, perhaps, of very frequent occurrence. But where the point does arise, I do not think that an assignee of the covenantee's business, or of his land, or of both, can enforce the covenant against the original covenantor. Nor, in my opinion, can the original covenantee enforce it against an assignee of the covenantor. The benefit and burden of covenants can only run with the land of the parties if certain strict rules are observed. The benefit must either be expressly annexed to land or the covenant must be intended to benefit ascertainable land. In either case there must not only be the intention, but the covenant must in fact touch and concern that which it is intended to protect. Words cannot alter this fact; a purported annexation to that which is not touched or concerned is nugatory: *Re Ballard* [1937] Ch. 473. Conversely, the burden cannot run with the land unless, in addition to all the other better-known requirements, the covenantee has land "capable of enjoying, as against the land of the covenantor, the benefit of the . . . covenant," per Buckley, L.J., in *L.C.C.* v. *Allen* [1914] 3 K.B. 642, 660. In that case, it will be remembered, the L.C.C. failed in their action against the assignee of the covenantor in respect of a breach of covenant upon which they succeeded against the covenantor himself. The reason was that they had no land "capable of enjoying . . . the benefit of the covenant," although they had a distinct interest for other reasons in the observance of the covenant and also had land in various other places.

I am aware, of course, that a certain number of nineteenth-century decisions concerning "tied-houses" upheld the validity of covenants in cases where the defendants were assigns and where it was reasonably plain that the covenants were taken for the benefit of businesses. But those decisions were due, in my opinion, to the exaggerated importance given to notice at that time. For almost half a century after *Tulk* v. *Moxhay*, which was decided in 1848, covenants were enforced against persons taking the land with notice of their existence, without any real inquiry into the plaintiff's title or into the considerations discussed in *L.C.C.* v. *Allen*. It was that case which really settled the law as regards the running of the burden; the importance of the plaintiff's title was first given the importance which it now receives in *Rogers* v. *Hosegood* [1900] 2 Ch. 388. The two best known cases in the opposite sense were *Catt* v. *Tourle* (1869), L.R. 4 Ch. 654, and *Luker* v. *Dennis* (1877), 7 Ch. D. 227, both of which were expressly disapproved by Buckley, L.J., in *L.C.C.* v. *Allen*, at pp. 658–659. They would be decided differently at the present day.

Mr. C. M. S. WELLS, solicitor, has been appointed Clerk of the Breconshire County Council, and (subject to the approval of the Court of Quarter Sessions) Clerk of the Peace of the county. He was admitted in 1932.

Mr. R. M. DUNSTAN, the assistant solicitor in the Town Clerk's Department, Boston, Lincs., has been appointed to a similar position in the Clerk's Department of the Berkshire County Council.

# LANDLORD AND TENANT NOTEBOOK

## FRUIT

FRUIT, though the experience of Londoners at the time of writing suggests that none is grown in this country, has figured largely in decisions and in legislation affecting the interests of landlord and tenant. The general trend has been to favour those of the tenant, even in early times; this, no doubt, may be ascribed to the fact that the country was largely agricultural, coupled with the fact that the underlying idea of a lease was a grant of possession for a period of time in consideration of part of the yield of the land being returned (reddendum) to the grantor. Hence, authorities which show that, if the landlord wishes to except fruit, the clearest possible language is necessary. "If I grant a manor," said Brudnel, J., in *Bishop of London* v. *N.* (1522), Y.B. 14 Hy. 8, fo. 1, pl. 1, "except the wood and underwood, all the trees, great and small, are excepted; but apple trees and other suchlike are not excepted, because that they are not comprehended under such name of wood." This construction held good at a far later period. In *Wyndham* v. *Way* (1812), 4 Taunt. 316, the plaintiff brought an action of trespass against his ex-tenant of a Devonshire farm (who had acquired the term by marrying his predecessor in title) for cutting, topping and lopping apple trees, the claim being based on an exception of "all trees, woods, coppices, wood-grounds, of what kind or growth soever." It will be observed that in this exception "trees" and not merely "wood" were specifically mentioned; none the less it was held by Mansfield, C.J., that the *manner* in which the words occurred showed that they were meant to apply to something of a different nature from these fruit trees. Evidence had shown that in Devon most farms consisted largely of orchards, and these "fruit" trees were in fact young standard apple trees in a nursery on the farm. The learned Chief Justice observed that if the plaintiff's real complaint was of mismanagement, he would have his remedy, but it would not be an action for trespass; as to the latter "it was impossible to suppose that in Devonshire when an apple farm is let the apple trees are excepted." Then the plaintiff in *Bullen* v. *Denning* (1826), 5 B. & C. 842, suing on a clause in a ninety-nine-year lease of a Dorsetshire property excepting "all timber trees and other trees, but not the annual fruit thereof, and all saplings and standels likely to become trees," was *prima facie* in a good position to distinguish the earlier authorities, the words "but not the annual fruit thereof" pointing to an intention that apple trees themselves were within the exception; but again it was held that they were not, the court pointing out this time that "fruit," in the old law books, was not limited to fruit from fruit trees, and would include the "fruit" of timber trees. The effect of this decision, which was based partly on the *contra proferentem* rule of construction, is that a genus known as "orchard trees" would be recognised, but orchard trees are not a species of "trees" or "other trees."

On the first occasion when the Legislature made an enactment mentioning fruit grown on demised premises, it was, it so happens, in a pro-landlord measure, the Distress for Rent Act, 1737. Sections 7 and 8 of the Act introduced the right to distrain "growing crops," the full text enumerating "all sorts of corn and grass, hops, roots, *fruits*, pulse or other product whatsoever growing upon any part of the estate." Whether the present Courts Emergency Powers Act, 1939 (restriction on levying distress), would encourage or discourage landlords to avail themselves or from availing themselves of this enactment is difficult to say; one advantage of the position is that the removal of the element of surprise, occasioned by the necessity of obtaining leave of court, is less likely to occasion removal (clandestine or otherwise) of the potential distress; but, apart from the fact that seizure can be effected when fruit is still unripe, there may be trouble with the W.A.E.C.

But, in the latter part of the nineteenth century, the Legislature turned its attention to the position of tenant fruit growers who had omitted or failed to stipulate for compensation to be payable on the determination of their terms. The removability of fruit trees and bushes as "trade fixtures" had long been recognised by the common law; in his judgment in the leading case of *Penton* v. *Robart* (1801), 2 Ea. 88 (removal of a greenhouse by a Middlesex market garden tenant before quitting), Lord Kenyon, C.J., asked rhetorically: "Shall it be said that the great gardeners and nurserymen in the neighbourhood of this metropolis, who expend thousands of pounds in the erection of greenhouses and hot-houses, etc., are obliged to leave all these things upon the premises, when it is notorious that they are even permitted to remove trees, or such as are likely to become such, in the necessary course of their trade?" But, later, such measures as the Agricultural Holdings Act, 1883, the Allotments and Cottage Gardens Compensation for Crops Act, 1887, and the Market Gardeners' Compensation Act, 1895, introduced law by which tenants of the properties indicated might be able to claim payments for the planting of orchards and fruit bushes, planting fruit trees permanently set out, planting strawberry plants, etc.

The provisions of these statutes, modified or extended, are now contained in two statutes: the Agricultural Holdings Act, 1923, and the Allotments Act, 1922. The former deals with the growing of fruit by both tenant farmers who are, and tenant farmers who are not, market gardeners. The tenant farmer *simpliciter* qualifies for compensation for such improvements as planting orchards and fruit bushes and protecting young fruit trees provided he previously obtains the written consent of his landlord (Agricultural Holdings Act, 1923, s. 1, and Sched. I, Pt. I). The market gardener is entitled to compensation in respect of the planting of standard or other fruit trees and of fruit bushes permanently set out, the planting of strawberry plants and of rhubarb, and this whether consent was given by or notice given to the landlord or not (*ibid.*, s. 48, and Sched. III). The outgoing tenant of what is popularly called an allotment but officially designated an allotment garden, i.e., of an allotment of not more than 40 poles, wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family (Allotments Act, 1922, s. 22 (1)), has a statutory claim for compensation for growing crops and for manure applied, provided the tenancy is determined by the landlord between the 6th April and 29th September, or by re-entry under s. 1 (i) of the Act (land required for non-agricultural purposes) (*ibid.*, s. 2 (2) (*b*)). And tenants of allotments in the official sense ("any parcel of land, whether attached to a cottage or not, of not more than two acres in extent, held by a tenant under a landlord and cultivated as a farm or garden, or partly as a garden and partly as a farm" (s. 3 (7)) which are not allotment gardens in the official sense are entitled, no matter how their tenancies end, to compensation for fruit growing on the land and for labour expended on, and manure applied to, the land, and also, if the landlord's consent was previously obtained, to compensation for fruit trees or bushes provided and planted by the claimants.

The seventh Rent Tribunal set up in London on Wednesday, 7th August, covers Deptford, Greenwich, Lewisham and Woolwich, and its offices are at 197 Lewisham High Street, S.E.13. The members are: Miss I. Cooper-Willis, Barrister-at-Law (chairman); Major C. Davis (reserve chairman); Mr. W. H. Thurlow; Mr. W. R. Croucher and Mr. C. F. Meecham (reserve members). The tribunal's clerk is Mr. J. F. S. Howe.

The eighth London Rent Tribunal covers Southwark, Lambeth, Camberwell and Bermondsey, and its offices are at 169, Walworth Road, S.E.17. The members are: Miss D. Scott Stokes, Barrister-at-Law (chairman); Mr. H. A. Levinson (reserve chairman); Mr. A. R. Kelly; Mrs. K. D. S. Baker and Mr. F. L. Abbott (reserve members). The tribunal's clerk is Mr. G. T. Lee.

# TO-DAY AND YESTERDAY

**August 12.**—Ireland was in an exceedingly disturbed state in 1772. In Down and Antrim there were large bodies of men calling themselves Hearts of Steel, who forced arms and money from all sorts of people and extorted oaths of secrecy. Mr. Richard Johnson, a Justice of the Peace, who lived near Guilford in County Down, had formed an armed association of neighbours, tenants and servants to defend their lives and properties, and on 5th March had surprised a secret meeting of deputies from several bodies of the Hearts of Steel, arresting three of them. Next day 2,000 men attacked his house, which had a tiny garrison of twenty-three with ten rounds of ammunition each. The Rev. Mr. Morrell, a dissenting clergyman, was fatally wounded. When the defenders had exhausted their shot Mr. Johnson only escaped by swimming a river beneath a hail of bullets. When he returned two days later, he found his house destroyed. On 12th August, nine men were tried in the Court of King's Bench in Dublin for murdering Mr. Morrell or aiding and abetting the murder, and for pillaging and destroying the house. Two other men were tried for administering an unlawful oath. All were acquitted.

**August 13.**—In June, 1808, Major Alexander Campbell and Captain Alexander Boyd, both of the 21st Regiment of Foot, fought a duel. The captain was shot in the stomach and died in about eighteen hours. To the major he said: "You have hurried me. I wanted you to wait and have friends. Campbell, you are a bad man." On 13th August, Campbell was tried for murder at the Armagh Assizes. After an absence of half an hour the jury found him guilty but recommended him to mercy on the score of his good character. He was condemned to death and, despite strong efforts to obtain a reprieve, he was hanged.

**August 14.**—On 14th August, 1818, the future Lord Campbell wrote to his father from Gloucester about "the scrape we have got into by Garrow not arriving here in time to open the commission. Such a thing I believe has never happened since circuits were established in England." Campbell had left Monmouth, the last assize town, on horseback at eight on the previous Wednesday evening, arriving at Gloucester just before one. The judge, whose carriage had passed him about seven miles out of the town, had arrived shortly before. As Wednesday was the commission day, the question arose whether he could validly hold the assizes. The Under-Sheriff was dispatched to consult Lord Chancellor Eldon, who determined that all the commissions must be renewed.

**August 15.**—Handsome John Hatfield, though only a commercial traveller, managed by misrepresentations to get himself married to a natural daughter of Lord Robert Manners, who gave her a dowry of £1,000. He squandered this and in a few years she died, but both in England and Ireland he made use of the connection to represent himself as a near relative of the Rutland family. On the strength of this he led the life of a confidence trickster, finding himself more than once imprisoned for debt. One susceptible lady helped him out of his difficulties by paying his debts and becoming his second wife. His last escapade was to pose in the Lake District as The Hon. Alexander Hope, M.P., under which name he married Mary Robinson, the "Beauty of Buttermere," a charming girl, the daughter of a local innkeeper. The masquerade involved a forgery for which he was tried at Carlisle on 15th August, 1803, condemned to death, and hanged.

**August 16.**—On 16th August, 1809, the future Lord Campbell wrote to his brother that on his sixth circuit he "had little luck but was not entirely briefless. The only advantage I derive from answering cases for Marryat is that he sometimes gives me briefs to hold for him at sittings, which breaks me in a little to the impudence of *Nisi Prius* and . . . holds out the appearance of business."

**August 17.**—On 17th August, 1747, "two highway robbers, Hyne and Baxter, young men, were hanged at Gloucester."

**August 18.**—On 18th August, 1731, "Edward Mitchel was executed at Nottingham for forgery, made felony by a late Act of Parliament" (2 Geo. II, c. 25).

THE COCK LANE GHOST

The annual service of the Order of St. John of Jerusalem was this year held in the crypt of the Priory Church in Clerkenwell, for the building above was left by the air raids a mere shell. This crypt has intimate associations with that curious case which started in the realms of the supernatural and ended with a trial before Lord Mansfield, C.J., the hoax of the Cock Lane ghost, for though the manifestations occurred at the house of Parsons, the parish clerk of St. Sepulchre's, in Cock Lane, in West Smithfield, the body of the lady, whose supposed knockings caused such a sensation, lay in the crypt of St. John's. The highest society and the lowest idlers in the town flocked to the scene of the mystery, and at last the spirit promised to signify her presence by a knock upon her actual coffin in the vault. The great Dr. Johnson himself attended this investigation, which proved a fiasco, and he and the whole assembly concluded that there was "no agency of any higher cause." The knockings had always centred round the twelve-year-old daughter of Parsons, and the purport of their message was that the departed had been poisoned with arsenic by a certain gentleman who had been her lover, and at last he was driven to vindicate his character before the law. The child's father and mother, one Mary Frazer, who had acted as the ghost's interpreter, a clergyman and a respectable tradesman were all tried at Guildhall on a charge of conspiring against his life and character. A special jury found a verdict of guilty, but Lord Mansfield deferred sentence for some months. At the end of that time the clergyman and the tradesman, who had meanwhile agreed to pay the injured party a substantial sum in reparation of the wrong, were let off with a severe reprimand. The two women were sent to prison, one for a year and the other for six months. Parsons was condemned to a year's imprisonment in the King's Bench Prison, and was ordered to stand three times in the pillory at the end of Cock Lane. The populace, however, instead of pelting him, collected money for his benefit.

HONEST PRISONER

At Bow Street Police Court recently a girl earned the approval of the magistrate for an unusual form of assistance rendered to the police. She had been arrested for fighting another girl in the street, but while she was being taken to the police station the constable in charge of her saw a colleague in difficulties with a large, fierce drunk. "You go and help him and I'll wait till you've finished. Then you can arrest me later," she had told her captor. She was as good as her word and next morning her model behaviour won her a dismissal of her case under the Probation of Offenders Act. On a smaller scale, the incident recalls the story told by Sir Hubert Murray, Governor of Papua, of two native murderers, condemned to be hanged, whom he was taking in his yacht to Samarai for execution. During a short stop they went for a walk on shore. At the time of sailing they could not be found, but at the last minute they came running down to the shore shouting and gesticulating, apologising for being late and not noticing the time. When the Governor expressed surprise that they had not stayed in the forest they replied: "But you no say go with you Samarai to be hanged?" They were pardoned.

# COUNTY COURT LETTER

### Warranty of Motor Car

IN *Whiting* v. *Clark*, at Bournemouth County Court, the claim was for £100 as damages for breach of warranty on the sale of a motor car. The plaintiff's case was that he advertised for a Morris 12–6, 1936 model, and bought a car as such from the defendant. It transpired from the registration book that the car was a 1934 model. The plaintiff tried to stop payment of his cheque, but was too late. The defendant's case was that the car was in good condition and the plaintiff had admittedly had offers from prospective buyers. His Honour Judge Cave, K.C., gave judgment for the plaintiff for £50 and costs.

### Bankruptcy of Boat Builder

IN a recent application for discharge, at Bournemouth County Court, the bankrupt was aged forty-four, and had been unsuccessful in a business from 1922 to 1925, and again in another business until 1927. He then became a boat builder and was successful until 1929. In 1933 the business was transferred to another yard, but was only continued by means of loans. A first and final dividend had been paid of 6½d. in the pound on proofs admitted for £7,356. The chief sufferer was the bankrupt's mother. After five years' good war service the bankrupt had been promised a position as marine surveyor in a business concerning yachts. He had no intention of commencing in business on his own account. His Honour Judge Cave, K.C., granted the discharge, subject to one year's suspension.

# REVIEWS

**The Law of the Parish Church.** Second Edition. By W. L. DALE, LL.B., of Gray's Inn, Barrister-at-Law. 1946. London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

The first edition of this book appeared in 1932, and we well recollect its Foreword by the late Lord Atkin, from whom praise was always praise indeed! The present edition is a more venturesome review than the modest little volume which preceded it. Indeed, nearly fifteen years of the work of the Church Assembly has enlarged the opportunity of the author, and it may well be said that good use has been made of it, and the twenty or more measures passed by the Assembly, all of substantial importance, have been faithfully recorded. As the learned author points out (quoting Holdsworth's History of English Law) the history of the ecclesiastical courts in this country has since the sixteenth century been one long story of gradual loss of jurisdiction. Recent legislation has indeed reduced even the work of the consistory courts to little more than a nullity. Measures like the Chancel Repairs Act, 1932, which removed jurisdiction in regard to chancel repairs from the consistory courts to that of the county courts, and the Faculty Jurisdiction Measure, 1938, which gave power to the archdeacon to give permission for the carrying out of most of the repair work in churches by his certificate, and the setting up of faculty advisory committees in every diocese to advise on faculties, have reduced the consistory courts practically to a standstill. It seems probable that the need for ecclesiastical courts will shortly disappear entirely, and that all this new legislation providing for self-government in the church will hasten the end. Having all this in view, we can testify to the value of Mr. Dale's work, which gives excellent guidance to the clergy and laity alike for carrying on the church's work with economy and expedition without the intervention of legal procedure to the extent that was necessary before.

**Rent Restrictions Guide.** By LIONEL A. BLUNDELL, LL.M., of Gray's Inn, Barrister-at-law. 1946. London: Sweet and Maxwell, Ltd., and The Estates Gazette, Ltd. 12s. 6d. net.

The second edition of this work contains an exposition of the Furnished Houses (Rent Control) Act, 1946, which materially alters the law with regard to furnished lettings and also lettings with attendance or services such as hot water, heating, lighting, etc. The subject of rent restrictions is also affected by the Building Materials and Housing Act, 1945, and the relevant provisions of this statute are adequately dealt with by the learned author. This handy volume fully merits its modest description of "guide" to a subject which does not become less intricate with the passage of time.

# BOOKS RECEIVED

**A Text-book of Jurisprudence.** By GEORGE WHITECROSS PATON, of Gray's Inn, Barrister-at-Law. 1946. pp. x and (with Index) 528. London: Geoffrey Cumberlege (Oxford University Press). 21s. net.

**Quarter Sessions Handbook.** By LINTON THORP, K.C., of Lincoln's Inn, Recorder of Saffron Walden and of Maldon, and Chairman of Essex Quarter Sessions, and RAYMOND E. NEGUS, of the Inner Temple, Barrister-at-Law, Clerk of the Peace of the County of Essex. Second Edition. 1946. pp. ix and (with Index) 128. London: Stevens & Sons, Ltd. 6s. net.

**Handbook of Procedure and Evidence in Arbitration.** By W. T. CRESWELL, K.C., and NORMAN P. GREIG, of the Inner Temple, Barrister-at-Law. With a foreword by LORD AMULREE, K.C. Second Edition. 1946. pp. xv and (with Index) 175. London: Eyre & Spottiswoode (Publishers), Ltd., in conjunction with The Institute of Arbitrators (Incorporated). 10s. 6d. net.

**The Trial of German Major War Criminals: Opening Speeches of the Chief Prosecutors.** 1946. pp. 173. London: H.M. Stationery Office. 2s. 6d. net.

**How the Courts Work.** 1946. pp. 24. London: Sir Isaac Pitman and Sons, Ltd., for The National Council of Social Service. 6d. net.

**The Modern Law Review.** Vol. 9, No. 2. July, 1946. 6s. net.

**The Water Act, 1945.** By E. BRIGHT ASHFORD, of the Middle Temple, Barrister-at-Law. 1946. pp. lxxxviii and (with Index) 204. London: Eyre & Spottiswoode (Publishers), Ltd. 18s. net.

**Burke's Loose-Leaf War Legislation.** Edited by HAROLD PARRISH, Barrister-at-Law. 1945–46 Volume, Parts 7, 8 and 9. London: Hamish Hamilton (Law Books), Ltd.

# POINTS IN PRACTICE

*Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88–90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.*

### Purchase of House

*Q.* A on 30th November, 1939, entered into a contract with B for the purchase of a house, for the sum of £360, in which A was residing, the parties themselves drew up the contract, and the date was fixed for completion. A entered H.M. Forces and has only recently been demobilised. A now desires to complete the purchase and there has been no formal repudiation of the contract by B. A has not until recently attempted to complete the purchase owing to his being in H.M. Forces.

(1) Can A sue B for specific performance of the contract, or is he estopped by his laches?

(2) Can A sue B for damages for breach of contract, or is he debarred by the Statute of Limitations?

*A.* (1) A is estopped by laches and cannot sue B for specific performance.

(2) A claim by A for damages is barred by the Limitation Act, 1939, s. 2 (1) (*a*). It is not an action to recover land, to which the twelve-year period applies.

### Realty—Necessity for Letters of Administration before 1898

*Q.* A, the owner of a freehold house, died in 1897 intestate, leaving a husband, B, and two sons, C and D. Estate duty appears to have been paid in respect of this property on a C–1 Account, but a search of the Probate Registry discloses no trace of a grant of letters of administration to her estate. B remained in possession of the house as tenant by courtesy until his death in 1945. The eldest son, who is entitled as next of kin to the house, requires the same vested in him, and the personal representative of B is ready and willing to do whatever is necessary to effect this. Is the absence of grant to A's estate a defect in the title, or can B's personal representative assent to the vesting in the eldest son?

*A.* This is not a defect. A died before the Land Transfer Act, 1897, Pt. I, s. 1, commenced. (See subs. (5).) B's personal representatives can assent in favour of the eldest son. For a precedent of an assent, see *Rose's Conveyancing Precedents*, 3rd ed., p. 78, precedent VI. This precedent is not exactly in point, but can easily be adapted to cover the case of an intestacy and an absolute assent (in place of a will and an assent upon trust for sale).

## MATRIMONIAL CAUSES AT THE AUTUMN ASSIZES, 1946

In exercise of the power conferred by the Assizes (Matrimonial Causes) Provisional Order, 1946, the Lord Chief Justice and the President of the Probate Division have directed that divorce business at Birmingham shall, at the Autumn Assizes, 1946, be commenced on a date different from the date fixed as Commission Day at that town for the trial of criminal business.

The direction will not alter the date fixed as Commission Day for the trial of criminal business at Birmingham and will enable the divorce judges to sit at Birmingham while the King's Bench judges going the Midland Circuit are sitting at Aylesbury, Bedford and Northampton (and possibly at Leicester). The result will be as follows:—

MIDLAND CIRCUIT

*Birmingham*

Criminal and Civil Business (other than Divorce):
Commission Day, Tuesday, 3rd December.
Divorce Business:
Commission Day (and first sitting day), Wednesday, 16th October.

The first day on which divorce business is taken is, for the purposes of the Matrimonial Causes Rules, deemed to be Commission Day.

This arrangement is being made in order to facilitate the hearing of the large number of cases expected to be ready for trial at Birmingham.

Lord Chancellor's Office,
House of Lords, S.W.1.
12th August, 1946.

### Wills and Bequests

Mr. L. B. Page, formerly solicitor to the Great Western Railway, left £51,944, with net personalty £51,449.

# NOTES OF CASES

## COURT OF APPEAL

### Rees *v.* Hughes

Scott, Morton and Tucker, L.JJ. 10th May, 1946

*Administration of estates—Funeral expenses—Death of wife leaving separate estate—Whether husband liable—Married Women's Property Act*, 1882 (45 & 46 *Vict., c.* 75), *s.* 1 (1)—*Administration of Estates Act*, 1925 (15 & 16 *Geo.* 5, *c.* 23), ss. 32, 33, 34—*Law Reform (Married Women and Joint Tortfeasors) Act*, 1935 (25 & 26 *Geo.* 5, *c.* 30), *ss.* 1, 2.

Appeal from a decision of Judge Evans sitting at Conway County Court.

The defendant's wife died leaving a substantial separate estate. The expenses of her funeral having been paid by the executors of her will, one of them now sued to recover them and certain medical expenses from the husband. The county court judge having decided in favour of the executors, the husband now appealed. (*Cur. adv. vult.*)

SCOTT, L.J., in giving judgment, said that at common law, before modern legislation had altered the status of married women, the husband was liable for his wife's funeral expenses, and in the interests of public decency the law allowed a stranger who had voluntarily incurred and paid such expenses, without any request from the husband so to do, to recover them from him. The effect of s. 1 (1) of the Married Women's Property Act, 1882, and ss. 1 and 2 of the Law Reform (Married Women and Tortfeasors) Act, 1935, was to place a married woman in respect of the rights of property in the same position as a feme sole and, therefore, as a man; and by s. 34 (3) of the Administration of Estates Act, 1925, where the estate of a deceased person was solvent, it was to be applicable among other things towards the discharge of his funeral and testamentary expenses. All the original reasons which made the common law place on a husband the public duty of burying his deceased wife had, by virtue of the enactments referred to, disappeared where the wife died leaving assets. The appeal succeeded.

MORTON, L.J., agreeing, said that the question remained undecided whether a husband was still under a liability at common law for his wife's funeral expenses if she left no estate.

TUCKER, L.J., read a judgment agreeing.

The following cases were referred to in the judgments: *Willock* v. *Noble* (1875), L.R. 7 H.L. 580, at pp. 589–91, 596 and 603; *Bertie* v. *Lord Chesterfield* (1722), 9 Mod. 31; *Gregory* v. *Lockyer* (1821), 6 Madd. 90; *Willeter* v. *Dobie* (1856), 2 K. & J. 647, at p. 649; *Lightbown* v. *M'Myn* (1886), 33 Ch. D. 575, at pp. 576–77; *Edwards* v. *Edwards* (1834), 2 C. & M. 612, at p. 615; *Sharp* v. *Lush* (1879), 10 Ch. D. 468, at p. 472; *Green* v. *Salmon* (1838), 8 Ad. & El. 348; *Williams* v. *Williams* (1882), 20 Ch. D. 659, at p. 664; *Jenkins* v. *Tucker* (1788), 1 H. Bl. 91; *Ambrose* v. *Kerrison* (1851), 10 C.B. 776; *Bradshaw* v. *Beard* (1862), 12 C.B. (N.S.) 344; *Tugwell* v. *Heyman* (1812), 3 Camp. 297; and *Rogers* v. *Price* (1829), 3 Y. & J. 28.

COUNSEL: *Sutton*, K.C., and *Carey Evans*; *Gerald Gardiner*.

SOLICITORS: *Rhys Roberts & Co.*, for *Wm. George & Son*, Portmadoc; *Sharpe, Pritchard & Co.*, for *Porter & Co.*, Plas Vardre, Conway.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### Hirsch and Others *v.* Somervell and Others

Morton, Tucker and Asquith, L.JJ. 30th July, 1946

*Alien enemy—Action in respect of arrest on high seas and proposed deportation—Arrest made under Defence Regulations—Regulations inapplicable—Arrest valid under prerogative—Defendants officers of Crown—Application to strike out statement of claim—Whether any reasonable cause of action.*

Appeal from Roxburgh, J. (*ante*, p. 369).

The plaintiffs were originally Austrian nationals and became German nationals in 1938 as the result of the annexation of Austria. In 1941 they were arrested while on the high seas in a neutral ship and brought to this country. They applied for a writ of habeas corpus in 1944 on the ground that they had been deprived of their German nationality by a German decree and were stateless. There proceedings were decided against them, on the ground that the courts would not recognise an enemy decree changing nationality and their nationality remained German (*R.* v. *Home Secretary, ex parte L.* [1945] K.B. 7). In this second action the plaintiffs claimed relief against the defendants, who were servants of the Crown at the material dates, in respect of their arrest, detention and threatened deportation. By this summons the defendants applied to have the statement of claim struck out and the action dismissed. Roxburgh, J., made an order striking out the statement of claim on the ground that the cause of action was obviously and incontestably bad. The plaintiffs appealed.

MORTON, L.J., said that it was conceded that if each of the defendants had purported to be acting in exercise of the prerogative, enemy aliens would have no right to maintain an action against them by reason of any detention. It was submitted that even in time of war enemy aliens were not deprived of every remedy in the courts of this country (*Princess Thurn and Taxis* v. *Moffitt* [1915] 1 Ch. 58). They could even sue a Secretary of State for an injunction if he had purported to act in pursuance of regulations which did not in fact apply to the case, even if the acts in question would have been unassailable if they had been done in exercise of the prerogative. The Attorney-General directed their attention to s. 9 of the Emergency Powers (Defence) Act, 1939, which provided that the powers conferred by the Act should not be in derogation of the prerogative powers of the Crown. It was conceded that the acts in question could have been done in exercise of the prerogative, but it was alleged that they were in fact done in exercise of powers conferred by Defence Regulations which did not cover the case, and that it would not be open to any defendant, who purported to exercise such powers but had in fact exceeded them, to change his ground and to allege that he acted in exercise of the prerogative: *Attorney-General* v. *De Keyser's Royal Hotel* [1920] A.C. 508, at pp. 549, 554. These were not acts of state, and the courts could inquire into the matter: *Salaman* v. *Secretary of State for India* [1906] 1 K.B. 613, at p. 639. He would express no opinion as to the probability of that argument succeeding at the hearing of the action, but it was not so plain that the statement of claim disclosed no cause of action that the court should exercise the jurisdiction given by R.S.C., Ord. 25, r. 4. Nor was the case one in which the statement of claim was plainly shown to be frivolous or vexatious or an abuse of the process of the court. The argument before the Court of Appeal had not been presented in that form to Roxburgh, J., and he would not make any observations on that judgment. The appeal should be allowed.

TUCKER, L.J., agreed in allowing the appeal.

COUNSEL: *G. O. Slade*, K.C., and *Harold Brown*; *The Attorney-General* (Sir Hartley Shawcross, K.C., M.P.) and *Danckwerts*.

SOLICITORS: *Waller, Neale & Houlston*, for *Marsh & Ferriman*, Worthing; *The Treasury Solicitor*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

## KING'S BENCH DIVISION

### Schwalb *v.* H. Fass & Son, Ltd.

Hallett, J. 19th March, 1946

*Factories—Woodworking machinery—Inadequate guard—Failure to provide implement—Injury to operator—Employer's liability—Woodworking Machinery Regulations*, 1922 (*S.R. & O.*, 1922, *No.* 1196), *regs.* 17, 19, 21, 23.

Action tried by Hallett, J.

The plaintiff, while employed by the defendants, was working a vertical spindle moulding machine in their woodworking factory when his right hand came into contact with the saw, and he was injured. He had no clear recollection of how the accident happened. Expert evidence was accepted by Hallett, J., that the fence in use with the machine was not the "most efficient guard" which could have been provided to comply with reg. 17 of the Woodworking Machinery Regulations, 1922, as there was another type of guard which would have given the operator a further measure of protection, and the use of which would have been practicable. The defendants did not provide spikes or push-sticks in compliance with reg. 19 of the Regulations of 1922, but ample scrap-wood was available at the factory from which operators could manufacture push-sticks for themselves, and the plaintiff was competent to do so. Operators who desired push-sticks did, and preferred to, make them for themselves. The plaintiff now sued the defendants for breach of statutory duty.

HALLETT, J., said that the evidence left him in some doubt how the accident had happened. Counsel for the plaintiff relied on *Vyner* v. *Waldenberg Bros., Ltd.* [1946] 1 K.B. 50, reserving an argument that *Miller* v. *Boothman & Sons, Ltd.* [1944] K.B. 336, was wrongly decided. He alleged breaches of regs. 17 and 19 of the Regulations of 1922, which provided, respectively, that ". . . every vertical spindle moulding machine shall . . . be provided with the most efficient guard having regard to the nature of the work . . ." and that "a suitable spike or push-stick shall be kept available . . . at the bench of every" such machine. The additional guard described by the plaintiff's expert witness would have increased the protection given, but the plaintiff had not proved affirmatively that the accident was

due to its absence. But, as *Vyner* v. *Waldenberg, Bros., Ltd., supra*, showed, if a workman were injured in a way which could result from a breach of a safety provision, the onus shifted to the employer to prove that the injury was not due to the breach. The most practicable guard had not been supplied, and the accident could have resulted from that breach and was unexplained. The defendants had therefore failed to discharge that onus. As to reg. 19, a spike was not a suitable implement here. The plaintiff had one in his tool kit which he kept near him when at work. But that, and the fact that wood was available for a workman to make a push-stick from, did not constitute compliance with reg. 19. Counsel for the defendants, relying on *Smith* v. *Baveystock* [1945] 1 All E.R. 531 argued that the defendants had delegated to the plaintiff the duty of keeping a suitable spike or push-stick available, and that he could not complain of his own failure to perform the delegated duty. Goddard, L.J., there spoke of an implied delegation. Scott, L.J., in *Vyner* v. *Waldenberg Bros., Ltd., supra*, spoke of the definite delegation present in *Smith* v. *Baveystock, supra*, which, he said, was absent in the case before him and was essential in order to absolve the employer from the duty there in question. In the present case no delegation at all was established. While it might be right to imply a delegation where the adjustment of a special type of machine was concerned, the defendants failed to establish any delegation of duty in the provision of a safety appliance like a push-stick. There was evidence that the use of a push-stick would slow up production and so tend to effect adversely a bonus payable to the plaintiff, and that the use of it would be difficult. Neither of those considerations made the use of the push-stick "impracticable" within the meaning of reg. 23, whereby workmen were under a duty to use those implements unless the work being done rendered it "impracticable" to do so. The court could not substitute the words "inconvenient" or "difficult" for "impracticable." He (his lordship) could not decide the case on the basis that the plaintiff would probably, as the evidence showed, not have used the push-stick had it been provided. It was for the defendants, in discharge of the onus established by *Vyner* v. *Waldenberg Bros., Ltd., supra*, to prove that the plaintiff would not have used it, and they had not done that. The failure to use a push-stick seemed the most probable cause of the accident. With push-stick and no guard the accident could still have happened. With both, the evidence showed, it could not have happened. Therefore, the accident could have resulted from the breach, and there must be judgment for the plaintiff.

COUNSEL: *Edgedale; R. M. H. Everett.*

SOLICITORS: *Shaen, Roscoe & Co.; Barlow, Lyde & Gilbert.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

**R. *v.* National Arbitration Tribunal, *ex parte* G. A. Cramp and Sons, Ltd.**

Lord Goddard, C.J., Humphreys and Singleton, JJ.

31st May, 1946

*Emergency legislation—Master and servant—National Arbitration Tribunal—Order empowering Minister to submit matter not a "trade dispute"—Whether* ultra vires*—Inappropriate question submitted to tribunal—Whether tribunal entitled to determine—Defence (General) Regulations,* 1939 (*S.R. & O.*, 1939, *No.* 927), *reg.* 58AA*—Conditions of Employment and National Arbitration Order,* 1940 (*S.R. & O.*, 1940, *No.* 1305), *art.* 5.

Application for an order of prohibition.

The allegation was made that certain employers were failing to observe "the recognised terms and conditions" in a certain industry, observance of which is ordered by art. 5 (1) of the Conditions of Employment and National Arbitration Order, 1940. The trade union concerned with the industry accordingly reported the matter to the Minister of Labour and National Service, who referred to the National Arbitration Tribunal under art. 5 (3) of that Order the question, among others, whether the employers "are under an obligation to observe in respect of their employees . . ." the terms and conditions in the industry in question. Paragraph (*a*) of reg. 58AA of the Defence (General) Regulations empowers the Minister of Labour and National Service to set up a tribunal for the settlement of "trade disputes" as defined in the regulation. By art. 2 (1) of the Conditions of Employment and National Arbitration Order, 1940, the Minister, where a trade dispute has been reported to him, may refer it to the National Arbitration Tribunal which that Order by art. 2 sets up in pursuance of reg. 58AA. By art. 5 (3) any question arising on certain specified matters may be referred to the tribunal by the Minister "as if it were a trade dispute reported" to him under art. 2. This application was made on the grounds that art. 5 (3) of the Order of 1940 was *ultra vires* the Minister, and that in any event the question submitted to the tribunal was inappropriate.

LORD GODDARD, C.J., said that art. 5 (3) of the Order of 1940 was not *ultra vires* the Minister because it purported to permit him to refer to the tribunal a matter which was not a trade dispute as defined. The Minister had power under art. 5 (1) to require the observance of terms and conditions in accordance with the Order, and could accordingly have those terms and conditions determined by a single arbitrator, by a court of law or by the tribunal, as he chose. Effect must, however, be given to the second objection, though it was academic: A question to the tribunal whether the employers were bound to observe the terms and conditions in the industry concerned, was inappropriate, because they were under an express obligation under art. 5 (1) to observe them. The matter at issue, on a question properly framed, could be determined by the tribunal, but the tribunal could not entertain the question submitted. It was very important that appropriate questions should be submitted to the tribunal, because its decisions had the effect of imposing terms on other employees concerned in the same industry who had not been a party to the negotiations. The order sought would therefore be made.

HUMPHREYS and SINGLETON, JJ., concurred.

COUNSEL: *Rink* and *Michael Browne; The Attorney-General* (Sir Hartley Shawcross, K.C.) and *Arthian Davies; M. R. Nicholas* (for the trade union).

SOLICITORS: *J. J. Hurdidge; Solicitor, Ministry of Labour and National Service; Pattinson & Brewer.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## COURT OF CRIMINAL APPEAL

**R. *v.* Turvey**

Lord Goddard, C.J., Humphreys and Lynskey, JJ.

13th May, 1946

*Criminal law—Larceny—Intention to steal goods known to owner—Servant instructed to deliver goods to intending thief—Whether larceny committed.*

Appeal from conviction.

The appellant, an employee of the Ministry of Works and in charge of one of their depots, was convicted at Devonshire Quarter Sessions of larceny of certain of the Ministry's goods. The appellant approached one Ward, an employee of the Ministry also in charge of a depot, with a view to their stealing property of the Ministry which the appellant would pass to a receiver whom he knew. Ward, having informed his superiors of these facts, was instructed to hand over property of the Ministry to the appellant. On receiving the property the appellant, at Ward's request, made out a receipt showing the goods as being handed to the appellant for the appellant's depot. The police, having been informed, followed the appellant when he drove away with the goods and arrested him. The present appeal was from conviction of stealing the goods in question.

LORD GODDARD, C.J., giving the judgment of the court, said that the theft could only have taken place at Ward's depot. The appellant could, no doubt, have been charged with conspiracy, inciting to commit a felony, and other offences—he was sentenced to six months' imprisonment on other counts of the indictment to which he had pleaded guilty—but the question was whether he had stolen these goods. The chairman had relied on *R.* v. *Egginton* (1801), 2 East. P.C. 666. There, however, a master, hearing from his servant of an intention to rob his premises, decided to allow the premises to be entered in order to catch the robbers. The crime was committed notwithstanding that to do so had been made easy for the criminal. Here, however, Ward had been told to deliver the goods to the appellant. Moreover, the chairman had wrongly relied on the receipt as showing that after the appellant had left Ward's depot with the goods he could still steal them, because they were still under the control of the Ministry. For that receipt, purporting to show that the goods were for delivery to the appellant's depot, was fictitious to the knowledge of all concerned. It was, therefore, as if it did not exist. Finally, the appellant was not the less in control of the goods, once he had left Ward's depot, because the police were following him. Had their car broken down he would have got away with the goods. There was accordingly no theft, and the conviction on the count in question would be quashed.

COUNSEL: *Scott Henderson*, K.C., and *Malcolm Wright; Park.*

SOLICITORS: *Registrar, Court of Criminal Appeal; Director of Public Prosecutions.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

---

Mr. R. E. WOODWARD, assistant solicitor to Bootle Corporation, has been appointed Deputy Town Clerk of Warrington. He was admitted in 1938.

# RULES AND ORDERS

S.R. & O., 1946, No. 1308/L. 16
SUPREME COURT, ENGLAND
FEES

THE SUPREME COURT FEES (AMENDMENT) ORDER, 1946
DATED JULY 31, 1946

The Lord Chancellor, the Judges of the Supreme Court, and the Treasury, in pursuance of the powers and authorities vested in them respectively by Section 213 of the Supreme Court of Judicature (Consolidation) Act, 1925,* Section 305 of the Companies Act, 1929,† and Sections 2 and 3 of the Public Offices Fees Act, 1879,‡ do hereby, according as the provisions of the above mentioned enactments respectively authorise and require them, make, advise, concur in, sanction and consent to, the following Order :—

1. The following Fee shall be substituted for Fee No. 78A in Schedule I of the Supreme Court Fees Order, 1930‖ :—

| Item. | Fee. | Document to be stamped. |
|---|---|---|
| | £ s. d. | |
| " 78A. For filing a Notice of Application to make a decree absolute .. | 0 10 0 | The Notice of Application." |

2. The following Fees shall be inserted in the said Schedule, after Fee No. 107 :—

| Item. | Fee. | Document to be stamped. |
|---|---|---|
| | £ s. d. | |
| " 107A. For a photographic copy of a Petition in a matrimonial cause | 0 6 0 | The Petition |
| 107B. For a photographic copy of any decree in a matrimonial cause .. | 0 5 0 | The fee book " |

3. This Order may be cited as the Supreme Court Fees (Amendment) Order, 1946, and shall come into operation on the sixth day of August, 1946.

Dated the 31st day of July, 1946.

*Jowitt*, C.
*Goddard*, C.J.
*Merriman*, P.
*H. J. Wallington*, J.

Lords Commissioners of His Majesty's Treasury (*Joseph Henderson.* *Frank Collindridge.*

* 15 & 16 Geo. 5, c. 49. † 19 & 20 Geo. 5, c. 23.
‡ 42 & 43 Vict. c. 58. ‖ S.R. & O. 1930 (No. 579), p. 1728.

# RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 1205. **Bury St. Edmunds Gas** (Borrowing Powers) Order. July 12.
No. 1278. **Control of Engagement** (No. 2) Order. July 25.
No. 1210. **Control of Motor Fuel** Order. July 23.
No. 1211. Control of Motor Fuel Order, 1944, General Direction (Value of Units) No. 1. July 23.
No. 1212. Control of Motor Fuel (Northern Ireland) Order. July 23.
No. 1213. Control of Motor Fuel (Northern Ireland) Order, 1943, General Direction (Value of Units) No. 1. July 23.
No. 1257. **Disabled Persons** (Designated Employments) Order. July 25.
No. 1256. Disabled Persons (General) (Amendment) Regulations. July 25.
No. 1258. Disabled Persons (Standard Percentage) Order. July 25.
No. 1279. **Essential Work** (Coalmining Industry Order) (Revocation) Order. July 26.
No. 1266. Essential Work (Trawler Fishing) (Revocation) Order. July 25.
No. 1273. **Family Allowances** (Isle of Man Reciprocal Arrangements) Regulations. July 26.
No. 1265. **Food** (Manufactured and Pre-Packed Foods). Order further amending the General Licence, dated 11th September, 1943, under the Manufactured and Pre-Packed Foods (Control) Order, 1942. July 25.
No. 1221. **Food Standards** (Preserves). Order amending the Food Standards (Preserves) Order, 1944. July 24.
No. 1162. **Fur Apparel** (No. 9) Directions, Licence and Order. July 23.
No. 1218. **Goods and Services** (Price Control) Restriction of Re-sale. General Licence. July 23.
No. 1160. **Licensing Fees** (Scotland). Act of Sederunt extending certain Temporary Acts of Sederunt increasing Fees payable to Clerks of the Peace and Town Clerks. July 13.
No. 1272. **Limitation of Supplies** (Toys and Indoor Games) (No. 4) Order. July 26.
No. 1304. **Matrimonial Causes** (Amendment) (No. 2) Rules. July 31.
No. 1305. Matrimonial Causes (Decree Absolute) General Order. July 31.
No. 1294. **Motor Vehicles** (Authorisation of Special Types) (Amendment) (No. 2) Order. July 29.
No. 1151. **National Fire Service** (General) (No. 2) Regulations. July 19.
No. 1309. **Post-War Credit** (Income Tax) Regulations. August 1.
No. 1222. **Preserves.** Order amending the Preserves Order, 1944. July 24.
No. 1293. **Provision of Free Milk** Regulations. July 27.
No. 1303. **River Nene Catchment Board** (Waldersey Internal Drainage District) Order. July 18.
No. 1328. **Road Vehicles** (Registration and Licensing) (Amendment) (No. 2) Regulations. August 2.
No. 1161. **Session, Court of, Scotland, Fees.** Act of Sederunt extending certain Temporary Acts of Sederunt increasing Fees, and further increasing certain Fees. July 13.
No. 1164. **Supreme Court, England.** Rules of the Supreme Court (Long Vacation). July 25.
No. 1308. **Supreme Court Fees** (Amendment) Order. July 31.
No. 1271. **Traffic on Highways** (Revocation) Order. July 26.

HOUSE OF COMMONS PAPERS

No. 169. **Select Committee on Statutory Rules and Orders, etc.** 18th Report.

STATIONERY OFFICE

**List of Statutory Rules and Orders** issued during the period 1st January to 30th June, 1946.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

# NOTES AND NEWS

## Honours and Appointments

Mr. HUMPHREY FRANCIS O'LEARY, K.C., of Wellington, has been appointed to succeed Sir Michael Myers as Chief Justice of New Zealand. Mr. O'Leary was born at Blenheim in the Marlborough Province in 1886, and has been President of the New Zealand Law Society since March, 1935, in which year he was also appointed King's Counsel.

Mr. S. BRIGGS, solicitor, Deputy Town Clerk of Widnes, has been appointed Town Clerk of Bridlington. He was admitted in 1935.

Mr. H. L. SWINBURNE, solicitor, has been appointed Registrar to the Durham Chancery Court. He was admitted in 1922.

Mr. R. E. A. ELWES has been appointed chairman of Rutland Quarter Sessions. Mr. Elwes was called by the Inner Temple in 1925.

## Professional Announcements

Messrs. GODDEN, HOLME & Co. have changed their address to 5 Upper Belgrave Street, London, S.W.1. They are retaining an office at 7A Laurence Pountney Hill, Cannon Street, E.C.4.

Messrs. ELLISON & Co., practising at Colchester, Dovercourt and Braintree, wish to point out that they are not the firm of solicitors involved in the recent action before the Lord Chief Justice, *Hesketh Estates* v. *Duncan B. Gray & Partners and Others.*

## Notes

JOHN FREDERICK ATTENBOROUGH, solicitor, of Raymond Buildings, Gray's Inn, W.C., has been struck off the roll by the Disciplinary Committee of The Law Society on the ground that he had improperly utilised amounts held by him for clients.

The Sub-Committee on Footpaths and Access to Mountains, which was recently appointed by the National Parks Committee at the request of the Minister of Town and Country Planning, is prepared to consider written evidence which may be submitted on these questions. Such evidence should be sent, not later than 15th October, to The Secretary, Footpaths and Access to Mountains Sub-Committee, Ministry of Town and Country Planning, 32 St. James's Square, S.W.1.